

### **REMARKS**

This Amendment and the following remarks are intended to fully respond to the Office Action dated January 4, 2005. In that Office Action, claims 1-16 were examined, and all claims were rejected. More specifically, claim 6 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; claims 1 and 2 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Peace (USPN 6,687,260); claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peace, in view of McKay et al. (USPN 5,844,905); claims 5-8 and 10-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peace, in view of Lewis et al. (USPN 5,619,544); and claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Peace, in view of Lewis et al., and further in view of McKay et al. Reconsideration of these rejections, as they might apply to the original and amended claims in view of these remarks, is respectfully requested.

In this Response, claims 1, 4, and 6 have been amended; claim 3 has been canceled; no new claims have been added. Therefore, claims 1-2, 4-16 remain present for examination.

#### **Claim Rejections – 35 U.S.C. § 112**

Claim 6 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically the examiner has submitted there is no antecedent basis for "...the query..." language in claim 6. The Applicants have amended claim 6 to alleviate this rejection. Applicants submit that claim 6 is now in allowable form and respectfully request it be allowed. Applicants thank the examiner for pointing this out.

#### **Claim Rejections – 35 U.S.C. § 102**

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Peace (USPN 6,687,260). Claim 1 has been amended to overcome this rejection. Claim 1 now includes the limitation of receiving a receipt acknowledgment from the computer system indicating that the computer system received the data file, and reasserting the clear-to-send flag in response to receiving the receipt acknowledgment. Nowhere does the Peace reference show,

or suggest these limitations. Applicants believe claim 1 is now in condition for allowance and respectfully request the same.

**Claim Rejections – 35 U.S.C. § 103(a)**

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peace, in view of McKay et al. (USPN 5,844,905). Claim 3 has been cancelled, however Applicants respectfully traverse the section 103 rejections. The Examiner has failed to substantiate a prima facie case of obviousness because one or more of the requirements of a prima facie case is absent. Indeed, such a prima facie case can only be met when **all** of the following requirements are met: (1) there must be some suggestion or motivation in the references themselves (or in the knowledge available to those skilled in the art) to combine the references; (2) there must be a reasonable expectation of success; and (3) the combined references must teach or suggest all the claim limitations. See MPEP §§ 706.02(j) and 2143.

In this case, the combination of Peace and McKay et al. does not teach all of the claim limitations, e.g., receiving a receipt acknowledgment from the computer system indicating that the computer system received the data file, and reasserting the clear-to-send flag in response to receiving the receipt acknowledgment, and there is no motivation to combine the references.

Furthermore, there is no motivation to combine the references. Applicants would like to draw the Examiner's attention to the case of In re Sang Su Lee, 277 F.3d 1338; 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). An examiner must demonstrate a motivation to combine shown in the objective teaching of the prior art or by the knowledge of one skilled in the art. *Id.* at 1343. In addition, the motivation cannot be resolved on subjective belief and unknown authority. *Id.* The examiner, "must not only assure that the requisite findings [as to the motivation to combine] are made, based on evidence of the record, but must also explain the reasoning by which the finding are deemed to support the agency's conclusion." *Id.* Thus, Examiner has failed to provide the appropriate information to show a motivation to combine. Without the motivation to combine, Examiner has not set forth the prima facie case for obviousness.

Thus, as a matter of law, for the aforementioned reasons, Applicants assert that the combination of Peace and McKay et al. does not disclose, implicitly or explicitly, all the claim limitations in the present disclosure.

Given that the combined references do not teach or suggest all the claim limitations of claims 3 and 4, and amended claim 1, and claims 2, 5-6 depend from claims 1 and 4, all claims are believed to be allowable over the prior art. That is, because Peace and McKay et al. do not disclose receiving a receipt acknowledgment from the computer system indicating that the computer system received the data file, and reasserting the clear-to-send flag in response to receiving the receipt acknowledgment, claims 1-2, and 4-6 are not obvious in light of Peace and McKay et al. Furthermore, since there is no motivation to combine these references, it is further believed that claims 1-2, and 4-6 are allowable over Peace and McKay et al. for this additional reason. Similarly, all claims depending from those claims are also believed to be allowable and reconsideration of the outstanding rejections in light of these remarks is respectfully requested.

Claims 5-8 and 10-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peace, in view of Lewis et al. (USPN 5,619,544); Again Applicants submit the examiner has failed to make a prima facie case as outlined above. Specifically neither Peace nor Lewis et al. disclose or suggest determining whether the first data file is available for transfer. Lewis may show a circuit for transferring files, however no determination takes place, or is suggested. Furthermore, Applicants respectfully submit that the examiner has failed to show that the motivation to combine is found in the references. For these reasons, Applicants respectfully submit that claim 7, and dependant claims 8-11 are allowable over the prior art, and reconsideration is respectfully requested.

As to claim 12, again Applicants submit the examiner has failed to make a prima facie case as outlined above. Specifically neither Peace nor Lewis et al. disclose or suggest a sequence broker, transmit, broker, or a clear to send broker. Lewis may show a circuit for transferring files, however no type of broker is disclosed, or is suggested. Furthermore, Applicants respectfully submit that the examiner has failed to show that the motivation to combine these references is found in the references. For these reasons, Applicants respectfully submit that

claim 12, and dependant claims 13-16 are allowable over the prior art, and reconsideration is respectfully requested.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Peace, in view of Lewis et al., and further in view of McKay et al. Because claim 9 depends from allowable claim 7, as outlined above, Applicants respectfully submit it is allowable and request it be allowed.

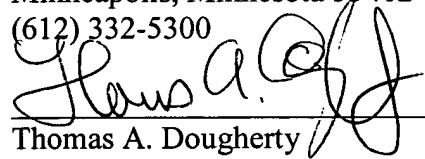
**Conclusion**

It is believed that no further fees are due with this Response. However, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment with respect to this patent application to deposit account number 13-2725.

In light of the above remarks and amendments, it is believed that the application is now in condition for allowance and such action is respectfully requested. Should any additional issues need to be resolved, the Examiner is requested to telephone the undersigned to attempt to resolve those issues.

Respectfully submitted,

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